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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. 3739

12 **EULALIO JAVIER LOMELI**
13 **3351 Honey Brook Way, 22**
Ontario, CA 91761
14 **Applicant for Pharmacy Technician**
Registration

STATEMENT OF ISSUES

15 Respondent.
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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia K. Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy (Board).

22 2. On or about July 14, 2009, the California State Board of Pharmacy received an
23 application for Pharmacy Technician Registration from Eulalio Javier Lomeli (Respondent). On
24 or about July 7, 2009, Eulalio Javier Lomeli certified under penalty of perjury to the truthfulness
25 of all statements, answers, and representations in the application. The Board denied the
26 application on May 4, 2010.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300, subdivision (c) of the Code provides, in pertinent part, that the board may refuse a license to any applicant guilty of unprofessional conduct.

5. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

"(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

....

"(p) Actions or conduct that would have warranted denial of a license."

6. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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7. Section 480 of the Code states, in pertinent part, that:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

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"(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

8. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

9. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCE

10. "Methamphetamine" is a Schedule II controlled substance as defined in Health and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section 4022.

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Possession of a Controlled Substance)

3 11. Respondent's application is subject to denial under section 4301, subdivisions (j) and
4 (o) of the Code, in that Respondent was found to be in possession of a controlled substance in
5 violation of section 4060 of the Code and Health and Safety Code section 11377, subdivision (a).
6 On or about April 21, 2008, during a traffic stop by a police officer from the Colton Police
7 Department, Respondent was found to be in possession of methamphetamine in violation of
8 Health and Safety Code section 11377, subdivision (a). As a result, Respondent was ordered to
9 appear in court in the subsequent proceedings which were entitled *People of the State of*
10 *California v. Eulalio J. Lomeli* (Super. Ct. San Bernardino County, 2008, No. MSB804950). A
11 Drug Court Plea Bargain agreement was filed. Respondent pleaded guilty but entry of judgment
12 was deferred until March 1, 2010, and the criminal proceedings were suspended pursuant to Penal
13 Code section 1000 and Respondent's compliance with certain terms and conditions, including
14 enrollment in a Drug Diversion Program.

15 SECOND CAUSE FOR DENIAL OF APPLICATION

16 (Acts Warranting Denial of a License)

17 12. Respondent's application is subject to denial under section 4301, subdivision (p) of
18 the Code, in that he committed an act that if done by a licensee would be grounds for suspension
19 or revocation of his license, in violation of Code section 480, subdivision (a), subparagraph (3),
20 subsection (A). Complainant refers to, and incorporates, all of the allegations set forth in
21 paragraph 11, as though set forth fully.

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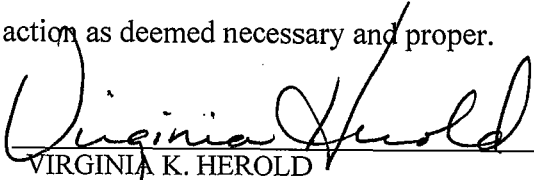
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Denying the application of Eulalio Javier Lomeli for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/5/11


VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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